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6 UNITED STATES DISTRICT COURT  
7 WESTERN DISTRICT OF WASHINGTON  
8 AT SEATTLE

9 EDWIN B. STEARNS, JR.,

10 Plaintiff,

11 v.

12 KATHERINE R. STEARNS, *et al.*,

13 Defendants.

Case No. C22-1579-RSL

ORDER OF DISMISSAL

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15 On December 21, 2022, the Court ordered pro se plaintiff Edwin B. Stearns, Jr. to show  
16 cause why his complaint should not be dismissed for lack of subject matter jurisdiction. Dkt.  
17 # 13. On January 13, 2023, Mr. Stearns filed his Response to the Order to Show Cause. Dkt.  
18 # 24.<sup>1</sup> On January 17, 2023, Mr. Stearns filed an Addendum to his Response. Dkt. # 26. Having  
19 reviewed the Response, Addendum, and the remainder of the record, the Court finds as follows:

20 Pursuant to Federal Rule of Civil Procedure 8(a), a complaint shall include “(1) a short  
21 and plain statement of the grounds for the court’s jurisdiction . . . , (2) a short and plain  
22 statement of the claim showing that the pleader is entitled to relief; and (3) a demand for the  
23 relief sought . . . .” Fed. R. Civ. P. 8(a). “Each allegation must be simple, concise, and direct.”  
24 *Id.* 8(d)(1). Although pro se complaints are to be construed liberally, *see Haines v. Kerner*, 404  
25 U.S. 519, 520-21 (1972); *Bernhardt v. L.A. Cnty.*, 339 F.3d 920, 925 (9th Cir. 2003) (“Courts  
26 have a duty to construe pro se pleadings liberally, including pro se motions as well as  
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28 <sup>1</sup> Plaintiff has requested oral argument. Dkt. # 24. The Court concludes that oral argument is unnecessary to its disposition of the motion. *See* Local Rules W.D. Wash. LCR 7(b)(4).

1 complaints.”), the court may not supply essential elements that are not pled, *Ivey v. Bd. of*  
2 *Regents of Univ. of Alaska*, 673 F.2d 266, 268 (9th Cir. 1982).

3 As the plaintiff, Mr. Stearns has the burden of alleging facts which give rise to federal  
4 jurisdiction. *See, e.g., Warth v. Seldin*, 422 U.S. 490, 518 (1975) (“It is the responsibility of the  
5 complainant to clearly allege facts demonstrating that he is a proper party to invoke judicial  
6 resolution of the dispute and the exercise of the court’s remedial powers.”). “Federal district  
7 courts are courts of limited jurisdiction, possessing only that power authorized by Constitution  
8 and statute. We presume that a cause lies outside this limited jurisdiction, and the burden of  
9 establishing the contrary rests upon the party asserting jurisdiction.” *K2 Am. Corp. v. Roland Oil*  
10 *& Gas, LLC*, 653 F.3d 1024, 1027 (9th Cir. 2011) (citations and internal quotation marks  
11 omitted). “A judge . . . may dismiss an action sua sponte for lack of jurisdiction.” *Franklin v.*  
12 *State of Or., State Welfare Div.*, 662 F.2d 1337, 1342 (9th Cir. 1981); *see also* Fed. R. Civ. P.  
13 12(h)(3).

14 The gravamen of plaintiff’s Amended Complaint is that plaintiff’s sister, Katherine  
15 Stearns, and financial advisor Melissa Cournyer have acted tortiously in the administration of  
16 assets belonging to the estate of plaintiff and Ms. Stearns’s father. *See generally* Dkt. # 7. In his  
17 Amended Complaint, plaintiff alleged that federal subject matter jurisdiction existed for his  
18 claims under 28 U.S.C. § 1331 (federal question jurisdiction) and 28 U.S.C. § 1332 (diversity  
19 jurisdiction). Dkt. # 7 at 1-2. However, because plaintiff had not established complete diversity,  
20 *Caterpillar, Inc. v. Lewis*, 519 U.S. 61, 68 (1996) (meaning “the citizenship of each plaintiff is  
21 diverse from the citizenship of each defendant”), and the Amended Complaint appeared to only  
22 allege violations of state tort law (as well as allegations relating to the ongoing state probate  
23 process), the Court raised the issue of subject matter jurisdiction sua sponte in an Order to Show  
24 Cause. Dkt. # 13. In his Response to the Order to Show Cause, plaintiff concedes that diversity  
25 jurisdiction does not exist. Dkt. # 24 at 2. Instead, plaintiff asserts that federal question  
26 jurisdiction exists under “the tort of conversion,” “the Securities Exchange Act of 1934,” and 12  
27 U.S.C. § 66. *Id.* at 3.

1 Federal question jurisdiction exists where the case “aris[es] under the Constitution, laws,  
2 or treaties of the United States.” 28 U.S.C. § 1331. “A case arise[es] under federal law within  
3 the meaning of § 1331 . . . if a well-pleaded complaint establishes either that federal law creates  
4 the cause of action or that the plaintiff’s right to relief necessarily depends on resolution of a  
5 substantial question of federal law.” *Empire Healthchoice Assurance, Inc. v. McVeigh*, 547 U.S.  
6 677, 689-90 (2006) (internal quotation marks omitted).

7 Here, plaintiff first contends that the “tort of conversion” provides a basis for federal  
8 question jurisdiction. Dkt. # 24 at 3. However, his conversion claim sounds in state tort law and  
9 does not provide a basis for federal question jurisdiction.

10 Plaintiff next contends that the “Securities Exchange Act of 1934” provides a basis for  
11 federal question jurisdiction. *Id.* The Securities Exchange Act of 1934 regulates “transactions in  
12 securities as commonly conducted upon securities exchanges and over-the-counter markets.” 15  
13 U.S.C. § 78b. Here, even construing the complaint liberally, as the Court must do for a pro se  
14 litigant, the Court finds plaintiff has failed to allege facts giving rise to a violation of the  
15 Securities Act of 1934. It appears that plaintiff is alleging fraud under the Act, as his Response  
16 indicates he believes his signature on certain forms was “extorted” through “deceit,” thereby  
17 permitting the “embezzlement” of funds plaintiff believes he is entitled to. Dkt. # 24 at 3-4.  
18 However, the Act prohibits fraud “in connection with the purchase or sale of any security  
19 registered on a national securities exchange.” 15 U.S.C. § 78j(b). Here, the only allegation  
20 plaintiff makes regarding securities is that “Defendant Cournyer held and managed stock from  
21 plaintiff’s father.” Dkt. # 24 at 3. Plaintiff does not allege that any defendant participated in the  
22 purchase or sale of a security with regard to the alleged conduct in the complaint. Because  
23 plaintiff has not alleged facts giving rise to a plausible inference that he has alleged a securities  
24 Act claim, the Act cannot provide the basis for federal question jurisdiction.

25 Finally, plaintiff contends that federal question jurisdiction exists under 12 U.S.C. § 66.  
26 This statute, part of the National Bank Act, provides:

27 the Persons holding stock as executors, administrators, guardians, or  
28 trustees, shall not be personally subject to any liabilities as stockholders;  
but the estates and funds in their hands shall be liable in like manner and to

1 the same extent as the testator, intestate, ward, or person interested in such  
2 trust funds would be, if living and competent to act and hold the stock in his  
3 own name.

4 12 U.S.C. § 66. In other words, the statute limits liability for persons holding national  
5 bank shares as executors, administrators, guardians, or trustees. *See Pufahl v. Parks' Est.*,  
6 299 U.S. 217 (1936); *Schram v. Kaplan*, 45 F. Supp. 628 (E.D. Mich. 1942). Here,  
7 plaintiff has not alleged that anyone (including his father's estate) holds national bank  
8 shares, nor that they are facing personal liability as a result of their stockholder status.  
9 Thus, the statute is irrelevant to plaintiff's pleaded allegations and cannot serve as the  
10 basis for subject matter jurisdiction.

11 Although plaintiff states that he "realizes that the only issues that he prays the  
12 federal court will hear are the issues regarding federal securities and that probate issues  
13 are a state court matter," Dkt. # 7 at 2, he fails to identify any federal securities issues –  
14 or any other basis for federal question jurisdiction – in either his Amended Complaint or  
15 Response to the Order to Show Cause. Accordingly, the Court DISMISSES plaintiff's  
16 Amended Complaint for lack of subject matter jurisdiction.

17 For all the foregoing reasons, the Court sua sponte DISMISSES the Second  
18 Amended Complaint without prejudice for lack of subject matter jurisdiction. The Court  
19 GRANTS plaintiff thirty (30) days from this Order to file an amended complaint curing  
20 the pleading deficiencies identified above. If plaintiff fails to cure the identified  
21 deficiencies in his second Amended Complaint, the Court will dismiss with prejudice.

22 IT IS SO ORDERED.

23 DATED this 23rd day of January, 2023.

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27 Robert S. Lasnik  
28 United States District Judge